IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-21-00632

DIRECTOR OF PUBLIC PROSECUTIONS

v

JOSHUA MURAT BOWEN

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	23 August 2021
DATE OF SENTENCE:	30 August 2021
CASE MAY BE CITED AS:	DPP v Bowen
MEDIUM NEUTRAL CITATION:	[2021] VCC 1272

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – Sentencing.
Catchwords:	Plea of guilty – Aggravated burglary – Armed robbery – Attempted theft – Attempted carjacking – Causing injury intentionally – Aggravated carjacking – Theft – Obtain financial advantage by deception – Rampage of very serious and frightening criminal conduct – Serious examples of aggravated burglary and armed robbery – Charge 12 is a serious example of intentionally causing injury – Disadvantaged background – Relevant criminal history – Category 1 offence – Special reason not established – *Verdins* – Prospects of rehabilitation not viewed positively – COVID-19 pandemic.
Legislation Cited:	*Crimes Act 1958* ss 18, 74, 75A, 77, 79, 79A, 82(1), 321M; *Road Safety Act 1986* ss 61(1A), 64(1), 10A; *Sentencing Act 1991* ss 6AAA, 10AD, 10A, 18, 89.
Cases Cited:	*Jones v The Queen* [2021] VSA 114; *The Queen v Lacey* [2007] VSCA 196; *Worboyes v The Queen* [2021] VSCA 169.
Sentence:	Imprisonment for a period of 8 years and 10 months with a non-parole period of 6 years.

APPEARANCES:	Counsel	Solicitors
For the DPP	Ms N Burnett	Office of Public Prosecutions
For the Accused	Ms A Brennan	Victoria Legal Aid

HIS HONOUR:

Introduction

1 Joshua Murat Bowen, you have pleaded guilty to the following offences:

- two charges of aggravated burglary contrary to s 77 of the *Crimes Act 1958*, which carries a maximum penalty of 25 years imprisonment on each charge (Charges 1 and 9);
- two charges of armed robbery contrary to s 75A of the *Crimes Act 1958* which carries a maximum penalty of 25 years imprisonment on each charge (Charges 2 and 6);
- one charge of attempted theft, contrary to s 321M and s 74 of the *Crimes Act 1958*, which carries a maximum penalty of 5 years imprisonment (Charge 3);
- one charge of attempted carjacking contrary to s 321M and s 79 of the *Crimes Act 1958*, which carries a maximum penalty of 10 years imprisonment (Charge 4);
- three charges of causing injury intentionally contrary to s 18 of the *Crimes Act 1958*, which carries a maximum penalty of 10 years imprisonment on each charge (Charges 5, 7 and 12);
- one charge of aggravated carjacking contrary to s 79A of the *Crimes Act 1958,* which carries a maximum penalty of 25 years imprisonment (Charge 8)*;*
- one charge of theft contrary to s 74(1) of the *Crimes Act 1958* which carries a maximum penalty of 10 years imprisonment (Charge 10)*;* and

- one charge of obtain financial advantage by deception contrary to s 82(1) of the *Crimes Act 1958* which carries a maximum penalty of 10 years imprisonment (Charge 11).

2 You have also pleaded guilty to the related summary offences of fail to stop a vehicle after an accident, contrary to s 61(1)(a) of the *Road Safety Act 1986* which carries a maximum penalty of 14 days imprisonment or 5 penalty units in this instance where it is the first time you have been convicted of the offence (Summary Charge 21) and one charge of drive in a manner dangerous, contrary to s 64(1) of the *Road Safety Act 1986* which carries a maximum penalty of 2 years imprisonment and/or 240 penalty units (Summary Charge 22).

3 You have also admitted your prior Criminal Record.

Circumstances of the offending

4 A prosecution opening was tendered on the plea and may be summarised as follows:

Drummond St, Carlton North

5 On 18 October 2019 at approximately 7.10 pm to 7.20 pm, the first victim, Kate Cullen was in her bedroom of her home in Drummond Street, Carlton North, preparing to go out with friends.

6 Ms Cullen left her bedroom and walked towards the back of her house when she observed you standing in the living room. You turned to face Ms Cullen who stated, ‘Hello, can I help you?’ You stated ‘What have you got, have you got money?’ You walked towards Ms Cullen. Ms Cullen slowly walked backwards, instinctively raising her hands to show you that she was calm before observing you holding something in your left hand. Ms Cullen stated that she was very scared at this point.

7 Ms Cullen stated, ‘Yes, I've got $20’ to which you said, ‘Oh yeah, have you got anything else?’ Ms Cullen replied, ‘Yep I've got a laptop’ whilst continuing to walk slowly backwards as you approached her. Ms Cullen directed you towards her

bedroom stating, ‘That's my room’. Whilst conversing with Ms Cullen, you maintained eye contact. Ms Cullen described that you ‘made eye contact with intensity and looked me up and down’ and, ‘whilst he seemed calm, his actions and his behaviour made me extremely scared’.

8 Upon reaching the hallway, Ms Cullen observed your left hand again and confirmed that you were holding a knife. Ms Cullen saw the silver handle and the glimmer of the blade as you held it between your thumb and finger to try and hide it up the back of your arm. Ms Cullen stated, ‘What are you going to do?’ to which you replied, ‘What am I going to do? Do you know who I am?’ It is these facts that relate to Charge 1, aggravated burglary.

9 By this stage, Ms Cullen continued to walk backwards and reached the front door. You stated, ‘$20, is that all you've got?’ with Ms Cullen replying, ‘No, I'm sorry, you can take anything’. You stated, ‘No, that's okay’, ‘Don't fucking call the police alright?’ and began to walk back down the hallway towards the rear of the residence. Ms Cullen opened the front door and ran outside across the road in order to seek help.

10 Whilst inside Ms Cullen’s residence, you stole two Apple laptops, an Apple iPhone and a set of car keys belonging to Ms Cullen. It is these facts that relate to Charge 2, armed robbery.

11 Ms Cullen observed her friends, Kieren Syme and Matthew Kelly, walking towards her house along the street and informed them of what had happened. The three went to the front of Ms Syme’s residence located at 963 Drummond Street and contacted the police.

12 After exiting the residence, you walked directly past witness Jenny Broadway on Pigdon Street, Carlton North. Ms Broadway had just parked her vehicle near the intersection of Pigeon Street and Drummond Street and was walking east on Pigdon Street towards her home. Ms Broadway thought you were acting

suspiciously so she observed you from a distance. She watched as you attempted to gain access to a 2009 silver Hyundai Getz hatchback, registration 1PD 7PU, that belonged to Ms Cullen before you fiddled with the door handle and lock of her vehicle, a 2004 black Ford Fiesta Sedan, registration SXD 592.

13 You walked towards the Hyundai Getz hatchback. Whilst observing you, Ms Broadway also observed Ms Cullen standing at the front of 937 Drummond Street appearing very upset.

14 You then gained access to Ms Cullen's vehicle and attempted to start the vehicle. Ms Broadway states that 'the lights came on and the engine was ticking over but it wasn't starting'. It is these facts that relate to Charge 3, attempted theft.

15 Ms Cullen, Ms Syme and Mr Kelly observed you walking along the street and attempting to open multiple car doors which were parked on the street. You crossed Drummond Street and walked north towards Ms Cullen, Ms Syme and Mr Kelly. As you walked past, you turned, looked directly at Ms Cullen and smiled before continuing to walk north along Drummond Street.

16 Police later attended the scene and located Ms Cullen's car keys beside the passenger seat of her vehicle along with her mobile phone in the rear driver's side foot well. Police obtained forensic evidence, including latent fingerprints from Ms Cullen's mobile and DNA swabs from the mouthpiece of an open can of Wild Turkey bourbon located on the kitchen bench. Latent fingerprints were also taken from the Wild Turkey can. The fingerprints from the Wild Turkey bourbon can and Ms Cullen's mobile phone were later analysed and matched to you.

17 On 20 October 2019, Ms Cullen was shown a photo board and selected you.

Lygon Street, Brunswick East

18 At 7.56 pm on 18 October 2019 , Vikas Pakkeer, parked and remained in his red 2017 Hyundai Elantra sedan, registration 1L0 6MR, outside 99 Lygon Street,

Brunswick East. Mr Pakkeer observed you standing on the footpath before checking his phone to pick up his next Uber customer.

19 You waited on the footpath. After approximately 20 seconds, you walked around to the driver's door and opened it. You stated, ‘get the fuck out of the car, get the fuck out of the car’. Mr Pakkeer was stunned for a few seconds before replying, ‘everything is fine, just cool down, I will get out of the car’.

20 Mr Pakkeer observed you holding a knife which he described as 20cm long, with sharp edges and silver coloured. Mr Pakkeer was shocked and scared. You stated, ‘Come on, get out of the car man’. Mr Pakkeer remained seated in the driver's seat of the vehicle with his right leg out of the door on the road. It is these facts that relate to Charge 4, attempted carjacking.

21 You then used the knife in your right hand to stab Ms Pakkeer to the right side of his right calf. Mr Pakkeer looked down and saw blood dripping from his calf and observed blood dripping from the knife that you were carrying. Mr Pakkeer yelled out, ‘what the hell is this and what the hell do you want, why is this happening?’ Mr Pakkeer continued to yell out before you again used the knife to stab Mr Pakkeer in the left side of his abdomen before running west on Weston Street, Brunswick East.

22 Mr Pakkeer suffered stab wounds to his right calf and the left side of his abdomen and was conveyed to the Royal Melbourne Hospital for treatment. It is these facts that relate to Charge 5 intentionally causing injury.

23 On 20 October 2019 Mr Pakkeer was shown a photo board and selected you. Police later obtained CCTV footage from the scene.

Saxon Street, Brunswick

24 Soon after at approximately 8.10 pm, the victim Glenn McCleary was walking home on Saxon Street, Brunswick, stopping for a cigarette in a park area. You approached Mr McCleary from behind and stated, ‘Give me your wallet’. Mr

McCleary turned around and you punched him in the mouth before yelling again, ‘Give me your wallet’ repeatedly. You pulled a knife from your jacket which Mr McCleary described as, ‘20cm in length with a black plastic handle’. Mr McCleary immediately grabbed your right hand to try to stop you.

25 You began to scuffle back and forth with Mr McCleary attempting to move towards a laneway off Saxon Street which leads to the Howler nightclub. You continued to attempt to grab Mr McCleary‘s brown leather satchel bag which he was carrying over his shoulder. Mr McCleary could see a bouncer at the front of Howler nightclub so he attempted to yell out to get his attention. You, holding the knife in your right hand lunged towards Mr McCleary and stabbed him in his lower left abdomen causing Mr McCleary to fall backwards. You put the knife away, held Mr McCleary on the ground with your left hand and used your right hand to pat down Mr McCleary before stealing an Android mobile located in Mr McCleary’s front left pants pocket and his leather satchel bag. It is these facts that relate to Charge 6, armed robbery.

26 You ran south on Saxon Street and Mr McCleary went to the Howler nightclub to seek assistance. Mr McCleary suffered a stab wound to his left abdomen and minor bruising to his jaw/lip area and was conveyed to the Royal Melbourne Hospital for treatment. It is these facts that relate to Charge 7, causing injury intentionally.

Royal Parade, Parkville

27 Soon after at approximately 8.30 pm, the victim Jamie Banks parked his red 2012 Ford Focus hatchback, registration ZCD 038, outside 517 Royal Parade, Parkville. As Mr Banks exited his vehicle, he observed you standing to his right approximately one car length away from him. You called out, ‘Hey’ and Mr Banks replied, ‘Hi’ before locking his vehicle and walking towards his friend's house. You followed him and called out, ‘Give me your keys’ to which Mr Banks said, ‘No’. You walked past Mr Bank’s left hand side and stood in front of him. Mr

Banks observed you holding a knife which he described as ‘a kitchen knife with a flat edge and an approximate 15cm long blade that was silver’.

28 You stated, ‘Give me your fucking keys’ with the knife pointed towards Mr Banks. Mr Banks handed you his car keys and you stated, ‘You're lucky you don't die right now’ whilst waving the knife in Mr Banks’ face. Mr Banks continuously said, ‘Just take them’ in the hope that you would leave him unharmed and you stated, ‘Allah Akbar’ whilst still waving the knife.

29 You unlocked Mr Banks’ car before yelling out to him, ‘Is it an auto or a manual?’ to which Mr Banks replied, ‘Auto’. You started Mr Banks’ vehicle and drove off. Mr Banks ran to his friend's house and contacted ‘000’. It is these facts that relate to Charge 8, aggravated carjacking.

30 At 11.12 pm, Sergeant Alan Kilby observed you in Mr Banks’ stolen vehicle, travelling south on Nepean Highway, Edithvale at a fast rate of speed. Sergeant Kilby attempted to intercept the vehicle but was unable to do so due to your speed.

31 The vehicle’s description and last known direction of travel was broadcast via the Police Communications Centre. Protective Services Officers Sujit Rajan and Tara McKay observed the vehicle. Sergeant Kilby entered Sinclair Avenue and observed that you had collided with a street sign and come to a stop and were standing at the boot of the vehicle. Sergeant Kilby parked his police vehicle behind you and as he went to exit his vehicle, you began to walk slowly towards the front of the stolen vehicle and then ran south.

32 Police searched the vehicle and located a silver kitchen knife between the driver’s seat and the centre console with apparent blood stains on the blade. The knife matched the description of the one taken from Ms Cullen’s residence earlier that night. Police obtained fingerprints from the vehicle which were later analysed and matched to you.

Carrington Street, Edithvale

33 At approximately 11.30 pm, you attended a residence in Carrington Street, Edithvale and gained access through unlocked glass doors at rear of the property. At the time, the victims Julia Dyer and Lindsay McNabb were asleep inside. It is these facts that relate to Charge 9, aggravated burglary.

34 Whilst inside, you took a set of car keys and a black purse containing a drivers licence, Medicare card, NAB credit card, all belonging to Ms Dyer along with miscellaneous cards in the family room. You made your way through an internal door accessing the garage and stole Ms Dyer's silver 2015 Toyota Corolla sedan, registration 1JY 7LT. It is these facts that relate to Charge 10, theft.

Springvale BP Service Station

35 On 19 October 2019 at approximately 1.50 am, you attended the BP Service Station located at 580 Springvale Road, Springvale in Ms Dyer's stolen vehicle. You filled the vehicle with fuel valued at $70 and then entered the store. Whilst in the store, you used Ms Dyer's credit card to purchase the fuel along with a pack of Winfield Optimum Crush Blue cigarettes, a Dare iced coffee, a Repco fuel can and funnel valued at $70.60. It is these charges that relate to Charge 11, obtain a financial advantage by deception.

Western Highway, Ararat

36 At approximately 2.15 pm the same day, Jasmine Weatherington was driving west on the Western Highway approximately five kilometres east of Ararat in her blue 2013 Toyota Corolla hatchback, registration 1AD 5WO. Ms Weatherington observed the vehicle 1JY 7LT, which you were driving, approaching from behind and gaining ground very quickly on her vehicle which was travelling at 100 km/h. You pulled out into the oncoming lane in order to overtake Ms Weatherington. Upon doing so, there was an oncoming truck that was approximately 200 metres away.

37 Ms Weatherington observed the short distance you had left to overtake her and immediately slowed down to approximately 80km/h to allow your vehicle to get

back into the correct lane. You pulled back in front of her, narrowly avoiding a head on accident with an oncoming truck. Ms Weatherington beeped her horn at you as she was amazed at what you had done.

38 Ms Weatherington remained three car lengths behind you and was travelling at 90 km/h when you suddenly engaged the brakes and brought the vehicle to a complete stop. Ms Weatherington slammed on her brakes but collided with the rear of your vehicle due to the distance between them. At the time, Ms Weatherington did not believe there was any reason for the vehicle to brake suddenly. It is these facts that relate to Summary Charge 21, fail to stop vehicle after an accident.

39 You immediately accelerated away at a fast rate of speed and drove erratically, swerving in and out of traffic and overtaking approximately three other cars. It is these facts that relate to Summary Charge 22, drive in a manner dangerous.

King Street, Ararat

40 At approximately 2.46 pm, you were observed by police in vehicle 1JY 7LT travelling west on the Western Highway approximately three kilometres east of Ararat with subsequent checks of the vehicle revealing it to be stolen. Police conducted a U-turn and followed you when you made a left hand turn into Maude Street. Police took up position behind you and activated their lights and sirens in an attempt to conduct an intercept. You stopped the vehicle momentarily at the intersection of Maude and Barkley Street before making a right hand turn into Barkley Street. Police activated the sirens of the police vehicle in short bursts to attempt to get your attention however you failed to stop, making a right hand turn into King Street, Ararat.

Arrest

41 At 3.08 pm, police observed you in vehicle 1JY 7LT travelling north-west on the Western Highway. Police maintained observations of your vehicle from a distance for approximately six minutes before you became aware of their presence and began driving erratically.

42 At approximately 4 pm, your vehicle was sighted by police travelling west on the Western Highway out of Horsham. At approximately 4.20 pm, other police members observed your vehicle on the side of the road on the Western Highway. Police parked their police vehicle behind you, exited and approached you. Leading Senior Constable Martin directed you to exit the vehicle however you ignored police requests and instead lit, and began to smoke a cigarette.

43 By this stage, multiple police units arrived at the scene. Police gained access to the vehicle by smashing the passenger side window of the vehicle and deployed OC foam causing you to open the driver's side door. You were arrested and provided with aftercare which you declined. At approximately 4.50 pm, you were conveyed to the Horsham Police Station and vehicle 1JY 7LT was seized by police.

Melbourne Custody Centre

44 On the following morning of 20 October 2019 at 1.14 am you made a 'no comment' record of interview with police.

45 You were remanded and at 1.05 pm the same day, you were in cell B11 of the Melbourne Custody Centre with Jose Madiera.

46 Whilst Mr Madiera was asleep, you began pacing back and forth in the cell. You took off your shirt, stood over Mr Madiera and began to punch him in the face. You punched Mr Madiera, who was still asleep, to the face 18 times.

47 Custody officers entered the cell and removed you. Mr Madiera was conveyed to the Royal Melbourne Hospital for treatment. Mr Madiera suffered bilateral orbital blowout, multiple facial fractures and a broken nose. Police later obtained CCTV footage from the scene. It is these facts that relate to Charge 12, causing injury intentionally.

Nature and gravity of the offending

48 When consideration is given to your offending as a whole, it represents a rampage of very serious and frightening criminal conduct over the course of one

evening, involving multiple victims. Once arrested, your offending continued the next day when you violently assaulted another prisoner who was asleep at the time of your attack. A number of the resultant offences are inherently serious as reflected by their maximum penalties. Aggravated burglary (Charges 1 and 9), armed robbery (Charges 2 and 6) and aggravated carjacking (Charge 8) are offences that each carry a maximum penalty of 25 years imprisonment.

49 The victim of Charges 1 and 2 was in her home alone in the evening when you entered, confronted her with a knife and made demands. Upon leaving you told the victim not to call the police. Unsurprisingly, as the victim notes in her statement, your actions and behaviours made her extremely scared. While your intent was to steal this was nonetheless a confrontational aggravated burglary where you also made demands using a knife which in my view constitutes serious examples of aggravated burglary and armed robbery.

50 In relation to Charge 4, attempted carjacking, you threatened the victim with a knife in order to get him out of his car. The victim was simply going about his work as an Uber driver when you approached him. Before the victim was able to exit the car you stabbed him in the calf before then stabbing him in his abdomen. I have viewed the CCTV footage of this incident which clearly depicts your violent and frightening conduct committed in a busy street.

51 In relation to the armed robbery the subject of Charge 6, after punching the victim in the face and demanding his wallet, you then produced a knife and stabbed him in the abdomen causing him to fall to the ground. You patted him down, found and stole his mobile phone and his bag before leaving the scene. In my view this is a serious example of this type of street armed robbery.

52 The victim of Charge 8 provided you with the keys to his car when you produced a knife and said ‘lucky you don’t die right now’, before driving away with his car. While in relation to this incident you did not physically injure the victim with the knife, in my view it is still a relatively serious example of aggravated car jacking.

53 In relation to the aggravated burglary and theft represented by Charges 9 and 10, while not as serious as the aggravated burglary the subject of Charge 1 that involved confrontation with the victim, you nonetheless entered a home, at night while the victims were asleep and stole their car.

54 Once in the stolen car you drove in a dangerous manner on the Western Highway swerving in and out of traffic and leaving the scene of an accident caused by your driving.

55 Once you were in police custody, CCTV footage from the Melbourne Custody Centre clearly shows your conduct that resulted in Charge 12, intentionally causing injury. I have viewed the footage and what is depicted on the footage is an act of vicious, gratuitous violence. You are pacing in the cell and you are clearly angry. You take off your shirt, you walk over to a sleeping man and repeatedly and rapidly punch him to the head 18 times, ultimately resulting in multiple fractures to his eyes, nose and face. Your conduct is in my view, a serious example of the offence of intentionally causing injury.

56 While no victim impact statements were filed, your conduct in relation to each incident where you confronted or attacked victims would have undoubtedly had a significant psychological impact. Further, in relation to the victims you physically injured they have also had to deal with their physical injuries in addition to the psychological impact.

Personal circumstances

57 You are now 27 years of age. You grew up in Melbourne in public housing and have one older sister. Your father is a truck driver and your mother worked as an aged care nurse. Your parents had a turbulent relationship and your father physically abused you as a child. You were the victim of sexual abuse from your father at the age of three and your male neighbour at the age of twelve. You state that your father is no longer abusive and that you currently maintain a positive relationship with your parents.

58 You completed primary school and secondary school up until Year 8, attending the alternative school Lynall Hall Community School. You struggled academically and displayed problematic behaviours resulting in suspensions. You engaged with child mental health services and were diagnosed with a conduct disorder. At the age of 12 you left the family home and were effectively homeless and living on the streets. You report that you were sexually abused by an older man on numerous occasions whilst homeless. At the age of 18 you were placed in residential care by the Department of Health and Human Services. You regularly ran away from residential care and for a period of three months you lived in independent living accommodation for teenagers with a youth mentor. Since then, you have never had stable accommodation when living in the community, being homeless and living with friends, partners and emergency accommodation from time to time.

59 As to your employment history, you have worked in unskilled labouring jobs including demolition work, fencing and bricklaying. More recently you were in receipt of the Newstart Allowance.

60 You have had various intimate relationships with women and substance abuse has been a feature of many of them.

61 It is clear chronic substance use has been highly problematic and destabilising for the majority of your life and triggered a number of mental health issues. You began smoking cannabis at the age of eight, drinking alcohol at the age of 11, using methamphetamine and benzodiazepines at the age of 15 and using heroin at the age of 21. You have continued to use those substances up until your incarceration. You have experienced episodes of drug induced psychosis, paranoia and suicidal ideation resulting in hospital admissions. This combination of factors has led to your involvement in the criminal justice system and your lengthy and relevant criminal history.

62 In 2019 you were incarcerated in Ravenhall Correctional Centre and report being physically assaulted by a guard, being stood over and being taken off the methadone program. You feel particularly aggrieved by this experience and you somehow link this mistreatment to your offending in this instance.

63 In the week leading up to the offending you had recently been released from prison, broken up with your then girlfriend and your mental health deteriorated. You were taken by police to hospital after presenting as paranoid and agitated. Both your girlfriend at the time and your mother expressed their concerns about you to mental health services at this time.

64 Whilst being in custody you have been experiencing psychiatric symptoms such as hearing voices and have spent periods in acute psychiatric units. You have been placed in a protection unit due to your aggressive behaviour towards staff and other prisoners. You are currently prescribed the antipsychotic medication olanzapine and are on the methadone program.

65 As noted, you have a positive relationship with your parents who are still together and upon release from custody you hope to live with them. You have no contact with your sister and do not have a network of friends. Your mother provided a note to the Court via email where she confirms your difficult childhood and that she and your father have been unable to get you appropriate help. She confirms that you have the love and support of her and your father upon your release.

66 Two reports were tendered on the plea prepared by Dr Prashant Pandurangi, forensic psychiatrist, dated 20 May 2020 and 8 June 2020. The first report was prepared in relation to fitness to stand trial and the second report in relation to whether you had a defence of mental impairment available to you. Dr Pandurangi concluded that you were fit to stand trial and that at the time of the offending, a mental impairment defence was not available.

67 Dr Pandurangi gave evidence on the plea confirming the content of his reports. He confirmed that your contact with mental health services began in your mid teens after you had developed a psychotic episode in the context of illicit drug use. You believed that your first hospitalisation and further hospitalisations were due to psychosis induced by drug use. You stated to Dr Pangurangi that in relation to this offending, you had obtained and used cocaine and cannabis in the days leading up to the offending. In the first report Dr Pangurangi noted:

> 68 He has a history of significant polysubstance abuse especially involving cannabis, amphetamines, opiates and alcohol. He probably uses illicit drugs as a coping mechanism to deal with stress and negative emotions, which then sets up a vicious cycle involving offending and the criminal justice system.[1]

69 In the second report Dr Pangurangi states:

> 70 His chaotic behaviour, at the time of the alleged offending is probably attributable to the intoxicating effect of the drugs which he had used prior to the alleged offences. Although he reports experiencing psychotic symptoms at the time of the alleged offences, there is no indication of such from the police interview or for several weeks following his reception to prison.[2]

71 A report prepared by Jane Lofthouse, neuropsychologist was tended on the plea. Ms Lofthouse also gave sworn evidence. Similar to the instruction you gave to Dr Pangurangi, you stated to Ms Lofthouse that you attributed your criminal offending to you being in a 'bad headspace' due to experiencing relationship difficulties coupled with drug use and the effects of perceived abuse you suffered at Ravenhall Correction Centre prior to your recent release.

72 Ms Lofthouse conducted a number of psychometric tests ultimately forming the view that your full scale Intelligence Quotient was 70, placing you in the

[1] Paragraph 60.
[2] Paragraph 61.

borderline range or, placing you better than or equal to only two percent of a similar age group. Ultimately, Ms Lofthouse formed the opinion that your test scores coupled with your personal history are consistent with you having a longstanding developmental disorder coupled with a brain injury as a result of your chronic drug and alcohol use. Ms Lofthouse was of the opinion that your intellectual impairment would have been present at the time of the behaviour that led to the offending. She was also of the view that your intellectual impairment would have been further impacted by your drug use and as such, your use of drugs should be considered a contributing factor in the criminal offending.

73 During the course of the plea there was some discussion in relation to whether you suffer from a personality disorder in addition to your intellectual deficits. Dr Pandurangi in his second report states that your personality was heavily shaped as a result of your early childhood difficulties and are best conceptualised under the paranoid, borderline and antisocial personality disorders.[3] However Dr Pangurangi and Ms Lofthouse did not conduct any specific testing to confirm such a disorder.

Sentencing considerations

74 Ms Brennan, who appeared on your behalf at the plea, outlined a number of matters in mitigation.

75 First and foremost is your plea of guilty. The matter resolved in the Magistrates' Court in March this year prior to any contested committal proceeding. The matter was committed to this Court by way of straight hand up brief. Your plea is a plea at the earliest opportunity and as this matter would have involved a lengthy trial, your plea has saved significant court time. Most importantly, your plea has spared the victims from giving evidence and reliving traumatic events. Your plea carries additional weight in the context of the pandemic which has created a

[3] Paragraphs 51 and 52.

substantial backlog of cases in the criminal justice system.[4] I therefore take your willingness to facilitate the course of justice into account in your favour.

76 Ms Brennan submitted that your plea is indicative of remorse. I accept that by your plea you have accepted responsibility for your conduct, however there is little evidence of actual remorse over and above your plea of guilty. Ms Lofthouse stated that you struggled to express remorse for the conduct that led to these charges. She maintains however that your intellectual impairment and other psychological issues impinge on your ability to have insight into your behaviour, which I accept.

77 Charge 8, aggravated carjacking is a Category 1 offence and pursuant to s 10AD of the *Sentencing Act 1991* (the Act), the Court must impose a term of imprisonment and fix a non-parole period of not less than 3 years unless the Court finds that a special reason exists under s 10A of the Act.

78 In this instance Ms Brennan submitted that a special reason exists pursuant to s 10A(2)(c) of the Act, namely that at the time of committing these offences, you had impaired mental functioning that was causally linked to the commission of these offences and substantially and materially reduces your culpability. In particular, Ms Brennan submitted that the nature of your impaired mental functioning is as a result of an acquired brain injury or neurological impairment pursuant to s 10A(1)(c) and (e), referencing Ms Lofthouse's opinion.

79 Dealing first with s 10A(2A), while it is clear that you were under the influence of drugs at the time, I am not able to determine on the evidence that any impaired mental functioning was *substantially* caused by self induced intoxication in this instance. However, in my view having taken into account the reports and oral evidence of Dr Pangurangi and Ms Lofthouse, together with your own account of the reasons for your offending, I am not satisfied that your impaired mental functioning was causally linked to the offending and substantially and materially

[4] *Worboyes v The Queen* [2021] VSCA 169 at [39].

reduced your culpability. While the submission was properly and earnestly made, Ms Brennan acknowledged that given the total effective sentence that would likely be imposed as a result of orders for cumulation, even if the exception could be established, it would serve no practical purpose.

80 Ms Brennan submitted that even if the Court does not find the s 10A(2)(c) exception, your cognitive impairment was extant at the time of the commission the offences and thereby limbs 1, 3 and 4 of the *Verdins*[5] principles are enlivened. Ms Brennan relies on the conclusions of Ms Lofthouse where she formed the view that there is a causal link between your longstanding developmental disorder, behavioural issues, intellectual impairment and poor psychological modulations, and the criminal offending in this instance. As is well established, while a specific causal connection is not required to reduce moral culpability or moderate deterrence, some connection is required. The connection must have a realistic connection to the offending in one of the non exhaustive ways described in *Verdins.*[6]

81 Ms Burnett who appeared on behalf of the Director of Public Prosecutions, submitted that the evidence does not allow for the application of *Verdins* principles 1, 3 and 4, however Ms Burnett did accept that principles 5 and 6 have application.

82 While again it is difficult to separate the effect of your drug taking from your intellectual impairment and longstanding developmental disorder, I accept that your impairment did to some extent, impair your ability to exercise appropriate judgement and your ability to make calm and rational choices at the time of the offending. As such in my view your moral culpability is able to be reduced to a limited extent. For the same reasons I find that general and specific deterrence can also be moderated to some extent. As to *Verdins* 5 and 6, I accept that your time in custody will be more difficult as result of your long standing behavioural

[5] *The Queen v Verdins* (2007) 16 VR 269.
[6] Ibid at [26].

issues and intellectual impairment and, based on the evidence of Ms Lofthouse, that prison will have an adverse effect on your mental health.

83 As to your prospects of rehabilitation, it is self evident that you will require significant assistance to overcome your long standing drug problem that has already impacted on your mental health. You have an extensive and relevant criminal history where other interventions have been unable to assist you in breaking the cycle of drug use and offending. You will also require ongoing assistance for your mental health concerns. As such, although you have the support of your family upon your release, in my view at this stage your prospects of rehabilitation cannot be viewed positively.

84 Ms Brennan also submitted that your drug addiction should be taken into account in mitigation citing *The Queen v Lacey.*[7] In my view the evidence does not establish the requisite link between the offending and your drug addiction. As noted above, you stated to both Dr Pandurangi and Ms Lofthouse that you attributed the offending to being in a 'bad headspace' due to experiencing relationship difficulties and perceived mistreatment at Ravenhall Correctional Centre.

85 Ms Burnett submitted that deterrence, both general and specific, denunciation of your conduct and protection of the community are paramount sentencing considerations. I agree. Although some moderation is able to apply to general and specific deterrence, they are still relevant sentencing considerations. Your longstanding behavioural impairments coupled with your drug addiction means that protection of the community must also carry considerable weight in the sentencing discretion.

86 I take into account the fact that your time in custody has been particularly onerous as a significant portion of your pre sentence detention has been served during the COVID-19 pandemic. Prisoners are subjected to lockdowns,

[7] [2007] VSCA 196. See also *Jones v The Queen* [2021] VSA 114.

quarantine periods and restrictions on personal visits, education and rehabilitative programs. Given the current state of the virus in the community, it would appear that restrictions may remain for some time.

87 Finally, as you are being sentenced for a number of offences, I take into account the principle of totality in arriving at a just and appropriate sentence.

Sentence

88 Mr Bowen please stand.

89 Joshua Bowen, on Charge 1, aggravated burglary, you are convicted and sentenced to 6 years imprisonment which will be the base sentence. On Charge 2, armed robbery you are convicted and sentenced to 4 years imprisonment. On Charge 3, attempted theft of a motor vehicle, you are convicted and sentenced to 12 months imprisonment. On Charge 4, attempted carjacking, you are convicted and sentenced to 3 years imprisonment. On Charge 5 causing injury intentionally, you are convicted and sentenced to 3 years imprisonment. On Charge 6, armed robbery, you are convicted and sentenced to 5 years imprisonment. On Charge 7, causing injury intentionally, you are convicted and sentenced to 3 years imprisonment. On Charge 8, aggravated carjacking, you are convicted and sentenced to 5 years imprisonment. On Charge 9, aggravated burglary, you are convicted and sentenced to 5 years imprisonment. On Charge 10, theft, you are convicted and sentenced to 18 months imprisonment. On Charge 11, obtain financial advantage by deception, you are convicted and sentenced to 3 months imprisonment. On Charge 12, causing injury intentionally, you are convicted and sentenced to 4 years imprisonment.

90 On Summary Charge 21, failing to stop following an accident, you are convicted and fined $500. On Summary Charge 22, driving in a manner dangerous, you are convicted and sentenced to 4 months imprisonment.

91 I direct that 6 months of the sentence on Charges 4, 6, and 9, and 8 months of the sentence on Charges 8 and 12 be served cumulatively on each other and on

Charge 1, making for a total effective sentence of 8 years and 10 months. I direct that you serve 6 years before becoming eligible for parole.

92 In relation to charges 3, 4, 8 and 10, pursuant to s 89 of the *Sentencing Act 1991* your driver licence will be cancelled and you will be disqualified from obtaining a licence for a period of 5 years from today.

93 Pursuant to s 18 of the *Sentencing Act 1991*, I declare that 681 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.

94 Pursuant to s 6AAA of the *Sentencing Act 1991*, if not for your plea of guilty , I would have sentenced you to 11 years imprisonment with a non parole period of 7 years and 6 months.

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